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REPORT
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DEPARTMENT OF LABOR EXECUTIVE LEVEL CONFORMING AMENDMENTS OF 1986

SEPTEMBER 24, 1986.—Ordered to be printed

Mr. HATCH, from the Committee on Labor and Human Resources, submitted the following

REPORT

[To accompany S. 2864]

The Committee on Labor and Human Resources, having considered an original bill to provide for a Deputy Secretary of Labor, an Assistant Secretary of Labor for Administration and Management, three additional Assistant Secretaries of Labor, and for other purposes, reports favorably thereon without amendment and recommends that the bill do pass.

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I. THE BILL AS REPORTED

S. 2864

A BILL To provide for a Deputy Secretary of Labor, an Assistant Secretary of Labor for Administration and Management, three additional Assistant Secretaries of Labor, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Department of Labor Executive Level Conforming Amendments of 1986".

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S543-25

SEC. 2. (a)(1) Section 1 of the Act of April 17, 1946 (60 Stat. 91; 29 U.S.C. 552), as amended, is amended by striking out "Under" wherever it appears in such section and inserting in lieu thereof "Deputy".

(2) Section 5313 of title 5, United States Code, is amended by inserting at the end thereof:

"Deputy Secretary of Labor.".

(3) Section 5314 of title, 5, United States Code, is amended by striking:

"Under Secretary of Labor.".

(4) Any reference to the Under Secretary of Labor in any law, rule, regulation, certificate, directive, or other document in force on the date of enactment of this Act shall be deemed to refer and apply to the Deputy Secretary of Labor.

(b)(1) Section 2 of the Act of April 17, 1946 (60 Stat. 91; 29 U.S.C. 553), as amended, is amended by striking out "five" in the first sentence of such section and inserting in lieu therefore "nine".

(2) Section 5315 of title 5, United States Code, is amended by striking:

"Assistant Secretaries of Labor (5)."

and substituting therefor:

"Assistant Secretaries of Labor (9), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training.".

(3) Any reference in any law, regulation, certificate, directive, or other document to the Assistant Secretary of Labor for Veterans' Employment in force on the date of enactment of this Act shall be deemed to be a reference to the Assistant Secretary of Labor for Veterans' Employment and Training.

(c)(1) Section 3 of Reorganization Plan No. 6 of 1950 is repealed.

(2) Section 5316 of title 5, United States Code, is amended by striking:

"Assistant Secretary of Labor for Administration.".

(d) Section 5316 of title 5, United States Code, is amended by striking:

"Assistant Secretary of Labor for Veterans' Employment.".

(e) Subsection (c) of this Act shall become effective on the day upon which the individual who is the incumbent of the position abolished by such subsection, as of the date of enactment, ceases to hold the position.

(f)(1) The incumbent in the position of Under Secretary of Labor on the date of enactment of this Act may serve as Deputy Secretary of Labor at the pleasure of the President after such date and the amendments made by subsection (a)(2) shall apply to such incumbent.

(2) The incumbent in the position of Assistant Secretary of Labor for Veterans' Employment on the date of enactment of this Act may serve as Assistant Secretary of Labor for Veterans' Employment and Training at the pleasure of the President after such date and the amendments made by subsection (b)(2) shall apply to such incumbent.

II. Summary of the Bill

PURPOSE

The purpose of the bill is to conform the executive level of the Department of Labor to reflect the structure of most other Cabinet agencies.

SUMMARY

The bill would amend the Act of April 17, 1946, title 5 of the United States Code, and Reorganization Plan No. 6 of 1950 as follows:

A. The title of Under Secretary of Labor would be changed to Deputy Secretary of Labor and this position would be moved from Executive Level III to Executive Level II;

B. The number of Assistant Secretaries of Labor in the Department of Labor Organic Act, at 29 U.S.C. Sec. 553, would be increased from five to nine, incorporating the position of Assistant Secretary of Labor for Administration, which was previously established in Reorganization Plan No. 6 of 1950, and creating three new assistant secretary positions;

C. The position of Assistant Secretary of Labor for Administration would be abolished from Reorganization Plan No. 6 of 1950 to allow for the establishment of a position of Assistant Secretary of Labor for Administration and Management as one of the nine Assistant Secretary positions provided for in the Organic Act;

D. The title of Assistant Secretary of Labor for Veterans' Employment would be changed to Assistant Secretary of Labor for Veterans' Employment and Training;

E. The salary level for all Assistant Secretaries of Labor would be set at Executive Level IV;

F. The abolishment of the position of Assistant Secretary of Labor for Administration would become effective only when the incumbent serving in that position on the date of enactment of this legislation ceases to hold that position; and

G. Those incumbents serving as the Under Secretary of Labor and the Assistant Secretary of Labor for Veterans' Employment on the date of enactment of this legislation would be allowed to serve in the positions of Deputy Secretary of Labor and Assistant Secretary of Labor for Veterans' Employment and Training, respectively, at the pleasure of the President.

III. Background and Committee Views

Over the past few decades the scope and complexity of the activities of the Department of Labor have grown enormously. Those executives who manage agencies within the Department have been entrusted with the responsibility of carrying out programs of major significance to the welfare of the Nation. Such programs include the enforcement of laws protecting workers' health and safety, welfare and pension benefits, and equal employment opportunity. The Department is also responsible for evolving, in cooperation with

Congress, job training and worker dislocation policies which are critical to our Nation's competitiveness.

The modifications contained in this bill would assure that individuals who hold executive-level positions in the Department receive status and compensation commensurate with their responsibilities. Passage of this legislation would assure that the major areas of the Department are managed by appropriate level Presidential appointees who are confirmed by the Senate, as is the case throughout the Executive Branch.

The purpose of this bill is to change the title of the Under Secretary of Labor to Deputy Secretary of Labor, to change the title of the Assistant Secretary of Labor for Veterans' Employment to Assistant Secretary of Labor for Veterans' Employment and Training, and to increase the total number of Assistant Secretaries of Labor from eight to eleven. Appropriate salary increases would be provided for the Deputy Secretary of Labor and the Assistant Secretary of Labor for Veterans' Employment and Training.

The bill would also change the enacting language for the Assistant Secretary of Labor for Administration by removing that position from Reorganization Plan No. 6 of 1950 and adding it to the Department of Labor Organic Act, the Act of April 17, 1946, to put that position on equal footing with the other Assistant Secretary positions. This change will not affect the total number of Assistant Secretary positions.

The net result of these changes will be the creation of three new Assistant Secretary positions which the Secretary of Labor, in a letter to the Committee dated August 4, 1986 (see Cost Estimates section of this report), has indicated are to be filled by redesignating three of the five current Deputy Under Secretary positions at the Department of Labor. The effect of this redesignation would be a title change for these positions, with the salary level and duties remaining the same. The persons filling these positions would need to be nominated by the President and confirmed by the Senate after the enactment of this legislation.

In its cost estimate prepared for the Committee, the Congressional Budget Office (CBO) indicates that the cost to the federal government could be as high as $180,000 for each new Assistant Secretary position. The CBO also notes that the costs could be lower if the positions were filled from current personnel. (See CBO letter in Cost Estimate section of this report.) As was mentioned earlier, the Department of Labor has indicated that it intends to redesignate three of the current Deputy Under Secretary positions and estimates the total cost of the bill will not exceed $5,100. (See Cost Estimate section of this report.) It is the Committee's intention that the new Assistant Secretary positions be filled by the redesignation proposed by the Secretary of Labor, and that the corresponding Deputy Under Secretary positions be abolished.

It should be noted that the Committee disagree with CBO's assessment, in the second paragraph of its letter, of the effects of the bill. It is the Committee's view that the bill would create only three new Assistant Secretary positions, not four. Contrary to CBO's view, none of the new positions would be the Assistant Secretary for Veterans' Employment and Training since that position is already provided for in 38 U.S.C. Section 2002A. The fourth As-

sistant Secretary position added by this bill to the Organic Act would be the Assistant Secretary for Administration and Management; however, this is not a new position since it is merely being transferred from Reorganization Plan No. 6 of 1950 to the Organic Act.

Finally, some concerns were raised within the Committee as to the constitutionality of the sections of the bill which would allow the incumbents in the positions of Under Secretary of Labor and the Assistant Secretary of Labor for Veterans' Employment to serve in the positions of Deputy Secretary of Labor and Assistant Secretary of Labor for Veterans' Employment and Training. The Committee finds, based on a Congressional Research Service (CRS) memorandum to the Committee dated June 24, 1986, that these provisions do not violate either the President's of the Senate's powers as set out by the United States Constitution.

As that memorandum states:

> The Constitution vests in the President the power to appoint officers of the United States, subject to the advice and consent of the Senate. The appointment of officers is largely an executive function. See Kent, *Commentaries on American Law,* Vol. 1 at 287 (14th ed. 1896); 3 Ops. Atty. Gen. 188 (1837). Thus, Congress cannot appoint officers of the United States either directly (see *Buckley* v. *Valeo,* 424 U.S. 1, 135 (1976)) or indirectly (*Springer* v. *Philippine Islands,* 277 U.S. 189, 202 (1928)), and Congress cannot remove those officers, except by means of impeachment. See *Myers* v. *United States,* 272 U.S. 52 (1926); [*Bowsher* v. *Synar,* 478 U.S. — (1986)].
>
> However, under the necessary and proper clause Congress may both create and abolish offices. See *Buckley* v. *Valeo, supra,* 424 U.S. at 138. The legislature can establish and amend the salaries and duties of the offices which it creates. *Higginbotham* v. *City of Baton Rouge,* 306 U.S. 535, 538 (1939). And in *Shoemaker* v. *United States,* 147 U.S. 282, 301 (1893), the Supreme Court held that additional duties can be imposed by law upon an officer, which duties are germane to the office he holds, and that there would be no need for him to be appointed and confirmed again. . . . But the legislature may not use its power to create and abolish offices so as to in effect usurp the President's power to appoint and remove the officers holding those positions. See *Abolition of Federal Offices as an Infringement on the President's Power to Remove Federal Executive Officers: A Reassessment of Constitutional Doctrines,* Fordham L. Rev. 562, 588–93 (1974). (CRS memorandum at page 2.)

In the Committee's view, this legislation is merely an exercise of Congress' constitutional power to change the titles and adjust the salaries of executive branch officers. (See *Buckley* and *Higginbotham, supra.*) As noted in the CRS memo, "If the draft bill were to be viewed as a legislative attempt to promote the Under Secretary and the Assistant Secretary for Veterans' Employment, and thus to indirectly appoint them to offices which they do not hold,

then such legislation might infringe on the President's prerogatives under the appointments clause." (CRS memorandum at page 3.) However, both the current Under Secretary and the Assistant Secretary for Veterans' Employment have been nominated and confirmed to perform exactly the same duties they will perform as Deputy Secretary and Assistant Secretary for Veterans' Employment and Training. They were appointed and confirmed based on their ability to perform the duties of the offices, regardless of the titles or salaries attached.

IV. Cost Estimates

In accordance with paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following letters from the Congressional Budget Office and the Secretary of Labor are submitted as estimates of the costs which would be incurred in carrying out this bill. The comparison of these cost estimates, as required by paragraph 11(a)(2), is located in the Committee Views section of this report.

U.S. Congress,
Congressional Budget Office,
Washington, DC, July 10, 1986.

Hon. Orrin G. Hatch,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared a cost estimate for an original bill, the Department of Labor Executive Level Conforming Amendments of 1986, as ordered by the Senate Committee on Labor and Human Resources on June 25, 1986. CBO estimates the cost to the federal government of this bill to be about $725,000 in fiscal year 1987. Costs could increase to $900,000 by 1991 as a result of federal pay increases. The budgets of state and local governments would not be affected by enactment of this legislation.

The bill would replace the Under Secretary of Labor with a Deputy Secretary of Labor and create four new Assistant Secretaries of Labor. One is to be the Assistant Secretary of Labor for Veterans' Employment and Training. The second is to be the Assistant Secretary of Labor for Administration and Management, while the remaining positions are to oversee a variety of current programs and functions.

The majority of costs stem from the creation of the four new Assistant Secretary positions. We estimate salary and overhead costs to be about $180,000 per Assistant Secretary. A pay increase for the Deputy Secretary accounts for a small portion of the total costs. Costs to the federal government could be lower if positions were filled from current personnel.

Please call me or have your staff contact Michael Pogue (222–2820) if you have further questions.

With best wishes,

Sincerely,

Rudolph G. Penner, *Director.*

U.S. DEPARTMENT OF LABOR,
SECRETARY OF LABOR,
Washington, DC, August 4, 1986.

Hon. ORRIN G. HATCH,
Chairman, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN. I understand that questions have arisen regarding the budgetary impact of certain provisions of the Department of Labor's Executive Level Conforming Amendments of 1986, which your Committee ordered reported June 25. The Congressional Budget Office (CBO) has estimated that each of the new Assistant Secretary positions authorized in the bill will cost an additional $180,000 in salaries and overhead in FY 1987. We do not agree with this conclusion.

We do not believe a new cost should be calculated regarding the position of Assistant Secretary of Labor for Administration and Management. That position already exists within the Department as a Senior Executive Schedule (SES) career slot. It was authorized by Executive Reorganization Plan #6 of 1950. The language in our bill provides that in the future, this position will be subject to Presidential appointment with Senate confirmation. Furthermore, this provision does not affect the current incumbent. As a result, there would be no additional cost either in salary or overhead for the change in the status of this position.

Further, we do not believe there will be any additional costs associated in designating the remaining three Assistant Secretary positions authorized by the bill.

Five agencies of the Department are now headed by Deputy Under Secretaries—Secretarial appointments filling SES noncareer slots. Under this proposal, three of these agencies will be headed by Assistant Secretaries. Since the current Deputy Under Secretaries are already paid at an SES level equal to the salary of an Assistant Secretary, there is no cost increase to the government in redesignating these positions.

We estimate the total cost of the bill to be $5,100, reflecting an increase of $1,500 from elevating the Under Secretary at Executive Level III to a Deputy Secretary at Executive Level II, and consistent with a change to the Administration's proposal made by your Committee, raising the salary of the Assistant Secretary for Veteran's Employment and Training at Executive Level V to Executive Level IV ($3,600). This $5,100 cost would be derived from existing appropriated Salaries and Expenses (S&E) funds in the Departmental Management Account and from the S&E account of the Office of the Assistant Secretary for Veterans' Employment and Training.

There appears to be a misunderstanding regarding the number of new Assistant Secretaries which would be created by the bill. The intended effect of the bill is to create a total of eleven Assistant Secretaries, of which three would be new Assistant Secretary positions. The method of achieving this result is complex and requires an explanation.

The position of Assistant Secretary of Labor for Mine Safety and Health is specifically found at 29 U.S.C. Sec. 557a, and the position of Assistant Secretary of Labor for Veterans' Employment is specif-

ically found at 38 U.S.C. Sec. 2002A. Therefore, the Department of Labor Organic Act, at 29 U.S.C. Sec. 553, should be amended, as the reported bill does, to raise the number of Assistant Secretaries, provided for in that section, from five to *nine*. While this may, on its face, appear to create four new positions, one of these additional four would be the Assistant Secretary for Administration and Managment. Because the present authority for that position would be abolished elsewhere in the bill, the practical effect of the legislation, read as a whole, is to provide for only *three* new Assistant Secretaries.

In order to provide that all eleven Assistant Secretaries be placed in Executive Level IV, the amendment in the reported bill to 5 U.S.C. Sec. 5315, should read, "Assistant Secretaries of Labor *(10)*, one of whom shall be the Assistant Secretary for Veterans' Employment and Training." (Emphasis supplied.) The reason for the apparent anomaly is that the position of Assistant Secretary for Mine Safety and Health is elsewhere specifically listed under Level IV.

I thank you for your continued efforts and attention to this matter.

Very truly yours,

WILLIAM E. BROCK.

V. REGULATORY IMPACT

In accordance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the following statement of the regulatory impact of this original bill is made:

There is no additional regulation or change in current regulations anticipated as a result of the enactment of this legislation.

VI. SECTION-BY-SECTION ANALYSIS

Section 1 of the Act would establish the short title of the Act as the "Department of Labor Executive Level Conforming Amendments of 1986."

Section 2(a) of the Act would change the name of the Under Secretary of Labor to the Deputy Secretary of Labor. All references to the Under Secretary of Labor would be changed to the Deputy Secretary of Labor in the Act of April 17, 1946. The title of "Deputy Secretary of Labor" would be added to section 5313 of title 5 of the United States Code, Executive Level II positions, and the title of Under Secretary of Labor would be removed from section 5314, Executive Level III positions. All references to the Under Secretary of Labor in any law, rule, regulation, certificate, directive or other document in force on the date of enactment of this legislation would be deemed to refer and apply to the Deputy Secretary of Labor.

Section 2(b) of the act would increase the total number of Assistant Secretaries of Labor created in the Department of Labor Organic Act to nine by amending the Act of April 17, 1946, 29 U.S.C. 553, to reflect nine, instead of five, assistant secretaries. This section of the act would establish the salary of all Assistant Secretaries of Labor at Executive Level IV by amending 5 U.S.C. Sec. 5315 to reflect ten, instead of five, Assistant Secretaries of Labor, one of

which would be the Assistant Secretary of Labor for Veterans' Employment and Training, which position is created under Title 38 of the United States Code and was previously at Executive Level V. Finally, under this section of the act, all references to the Assistant Secretary of Labor for Veterans' Employment in any law, regulation, certificate, directive, or other document in force on the date of enactment of the Act shall be deemed to refer and apply to the Assistant Secretary of Labor for Veterans' Employment and Training.

Section 2(c) repeals section 3 of Reorganization Plan No. 6 of 1950 to abolish the position of Assistant Secretary of Labor for Administration and thereby allows for the establishment of the position of Assistant Secretary of Labor for Administration and Management as one of the nine Assistant Secretary positions created by the Department of Labor Organic Act. This section also amends section 5316 of title 5 of the United States Code to conform with the changes made in section 2(b) of this bill by removing the position of Assistant Secretary of Labor for Administration from Executive Level V.

Section 2(d) would amend section 5316 of title 5 of the United States Code, to conform with the changes made in section 2(b) of this bill, by removing the position of Assistant Secretary of Labor for Veterans' Employment from Executive Level V.

Section 2(e) would provide that the changes made by section 2(c) would not become effective until the individual, who is the incumbent of the position of Assistant Secretary of Labor for Administration on the date of enactment, ceases to hold the position.

Section 2(f) would provide that the incumbents in the positions of Under Secretary of Labor and Assistant Secretary of Labor for Veterans' Employment on the date of enactment may serve in the positions of Deputy Secretary of Labor and Assistant Secretary of Labor for Veterans' Employment and Training, respectively, at the pleasure of the President, and that the amendments made by section 2(a)(2) and 2(b)(2) would apply respectively to these incumbents.

VII. Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, and existing law in which no change is proposed is shown in roman):

The Act of April 17, 1946

(29 U.S.C. Sections 552 and 553)

AN ACT To establish an office of Under Secretary of Labor, and three offices of Assistant Secretary of Labor, and to abolish the existing office of Assistant Secretary of Labor, and to abolish the existing office of Second Assistant Secretary of Labor.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established in the Department of Labor the office of [Under] *Deputy* Secretary of Labor, which shall be filled by ap-

pointment by the President, by and with the advice and consent of the Senate. The [Under] *Deputy* Secretary shall perform such duties as may be prescribed by the Secretary of Labor or required by law. The [Under] *Deputy* Secretary shall (1) in case of the death, resignation, or removal from office of the Secretary, perform the duties of the Secretary until a successor is appointed, and (2) in case of the absence or sickness of the Secretary, perform the duties of the Secretary until such absence or sickness shall terminate.

SEC. 2. There are hereby established in the Department of Labor [five] *nine* offices of Assistant Secretary of Labor, which shall be filled by appointment by the President, by and with the advice and consent of the Senate. Each of the Assistant Secretaries of Labor shall perform such duties as may be prescribed by the Secretary of Labor or required by law. One of such Assistant Secretaries shall be an Assistant Secretary of Labor for Occupational Safety and Health.

SEC. 3. * * *

UNITED STATES CODE

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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CHAPTER 53—PAY RATES AND SYSTEMS

* * * * * * *

Subchapter II—Executive Schedule Pay Rates

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§ 5313. Positions at level II

Level II of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Secretary of Defense.
Deputy Secretary of State.

* * * * * * *

Administrator of the Environmental Protection Agency.
Deputy Secretary of Labor.

§ 5314. Positions at level III

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Under Secretary of Education.
Under Secretary of Health and Human Services.
Under Secretary of the Interior.

[Under Secretary of Labor.]

* * * * * * *

§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

Associate Administrator of the National Aeronautics and Space Administration.

* * * * * * *

Assistant Attorneys General (10).

[Assistant Secretaries of Labor (5).]

Assistant Secretaries of Labor (10), one of whom shall be the Assistant Secretary of Labor for Veterans' Employment and Training.

* * * * * * *

§ 5316. Positions at level V

Level V of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Administrator, Agricultural Marketing Service, Department of Agriculture.

Administrator, Agricultural Research Service, Department of Agriculture.

* * * * * * *

Assistant Attorney General for Administration.

[Assistant Secretary of Labor for Administration.]

* * * * * * *

Additional officers, Institute for Scientific and Technological Cooperation (2).

[Assistant Secretary of Labor for Veterans' Employment.]

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TITLE 5—APPENDIX

* * * * * * *

REORGANIZATION PLAN NO. 6 OF 1950

Eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1263

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1950, pursuant to the provisions of the Reorganization Act of 1949, approved June 20, 1949 [see 5 U.S.C. sec. 901 et seq.].

DEPARTMENT OF LABOR

1-2. * * *

3. [ADMINISTRATIVE ASSISTANT SECRETARY.—There shall be in the Department of Labor an Administrative Assistant Secretary of Labor, who shall be appointed, with the approval of the President, by the Secretary of Labor under the classified civil service, who shall perform such duties as the Secretary of Labor shall prescribe, and who shall receive compensation at a rate of $14,000 per annum.] *(Repealed).*

4. * * *

VIII. COMMITTEE ACTION

On June 26, 1986, the Committee on Labor and Human Resources ordered reported an original bill, the Department of Labor Executive Level Conforming Amendments of 1986, to provide for a Deputy Secretary of Labor, an Assistant Secretary of Labor for Administration and Management, three additional Assistant Secretaries of Labor, and for other purposes. The bill was ordered reported by a unanimous vote.

○